IN REPLY REFER TO

DEFENSE LOGISTICS AGENCY

DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J. KINGMAN ROAD, SUITE 4950 FORT BELVOIR, VIRGINIA 22060-6222

DESC-PLC (L.GILLETTE 703-767-9530)

January 13, 2004

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Request for Proposal (RFP) SP0600-02-R-0024-0001, Puerto Rico PC&S, Purchase Program 3.11 is hereby issued to solicit the following requirements:

<u>ITEM</u>		Estimated Quantity O	ffer Price per Gallon
	Carolina PR, AFNG, 156 th Air Wing, Muniz A Santana Ave. San Juan Municipality	Air National Guard Base, 200	Jose Anthony
760-03	Jet Fuel, Type A1 ***PORTS ACTIVE*** Tank Truck (TT), into 2 / 75,000 Gallon above ground tank Delivery Hours: 0630-1700 Monday NOTE: During Emergencies, delive weekends. This Fuel is Capitalized	thru Friday (Excluding Holi	days)
	San Juan PR, ANG, Army Aviation Support F	acility, Isla Grande Airport	
201-03	Jet Fuel, Type A ***PORTS ACTIVE*** Tank Wagon (TW), into 2 / 5,000 Gallon tanks Delivery Hours: 0630-1600 Monday This Fuel is Capitalized	117,000 USG Base Reference Price thru Friday (Excluding Holi	
	AGUADILLA PR, DHS U.S. Coast Guard, Airsta E Puerto County	Borinquen, 260 Calle Guard	
K35-03	Jet Fuel, Type A Tank Truck (TT), into 4 / 50,000 Gallon underground stora Delivery Hours: 0630-1600 Monday Delivery Required: 1-2 Deliveries p	thru Friday (Excluding Holi	days)



Your facsimile offer is requested for the above items in accordance with Clause L2.11-2, Facsimile Proposals. Defense Energy Support Center (DESC) facsimile number is (703) 767-8506.

The closing date and time for receipt of offers is <u>January 20, 2004, 3:00 p.m. local time</u>, Fort Belvoir, Virginia. Please identify your offer by making reference to RFP SP0600-02-R-0024-001. This is a supplemental solicitation to master solicitation SP0600-02-R-0024. Your offer shall include the statement that the offeror agrees to the terms and conditions of RPF SP0600-02-R-0024, as amended.

The terms and conditions of solicitation SP0600-02-R-0024, as amended, are hereby incorporated into this solicitation, except as indicated herein.

- (a) Under Clause 19.19, ECONOMIC PRICE ADJUSTMENT, the base reference price date is January 5, 2004, for the Jet Fuel only.
- (b) Per Clause I211, ORDERING, the ordering period is 1 February 2004 through 31 March 2005.

The following clauses/provisions are hereby deleted from Solicitation SP0600-02-R-0024:

B19.19	ECONOMIC PRICE ADJUSTMENT (PC&S) (DESC JUL 1999)
C16.69	FUEL SPECIFICATIONS (PC&S) (DESC OCT 2000)
F4	DELIVERY AND ORDERING PERIODS (DESC JUN 2002)
G9.06	ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DESC MAY 1999)
G9.07	ELECTRONIC TRANSFER OF FUNDS PAYMENTS - CORPORATE TRADE EXCHANGE (DESC JUN 2000)
G150.03-1	PAPERLESS ORDERING AND RECEIPT TRANSACTION SCREENS (PORTS) INTERNET APPLICATION
	(DESC MAR 1999)
G150.06	SUBMISSION OF INVOICES FOR PAYMENT (DOMESTIC PC&S) (DESC OCT 2001)
G150.11	SUBMISSION OF INVOICES BY FACSIMILE (DESC OCT 2001)
I1.01-1	DEFINITIONS (DESC JUL 1996)
I1.03-3	CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (NON-PORTS INTERNET
	APPLICATION) (DESC DEC 2001)
I1.04	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE
	ORDERS – COMMERCIAL ITEMS (DEC 2001)
I1.03-8	CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (PORTS INTERNET
71 00 0	APPLICATION) (DESC DEC 2001)
I1.03-9	CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (PORTS INTERNET
I1.04	APPLICATION) - ADDENDUM (DESC JUN 2001) CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE
11.04	ORDERS – COMMERCIAL ITEMS (DEC 2001)
11.05	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE
11.03	ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (MAR 2000)
I1.20-1	CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC NOV 1999)
128.01	FEDERAL, STATE, AND LOCAL TAXES (DESC NOV 1993) (DEVIATION)
I28.02-2	FEDERAL, STATE, AND LOCAL TAXES AND FEES (DESC NOV 2001)
I28.03-2	TAX EXEMPTION CERTIFICATES (DESC NOV 2001)



(Clauses listed below are incorporated by reference.)

I1.04	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE
	ORDERS – COMMERCIAL ITEMS (OCT 2003)
I1.05	CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE
	ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (OCT 2003)

Due to the urgency of the requirement, the Government may award a contract o the basis of the initial offers received, without discussions. The Government intends to award a contract to the responsible offeror whose offer conforming to the solicitation will be the most advantageous to the Government, price and other factors specified elsewhere in the solicitation considered. Accordingly, each offer should be submitted on the most favorable terms, from a price and technical standpoint.

If an Offeror Submission Package (OSP) was submitted under the master solicitation, SP0600-02-R-0024, then an OPS is not required for this solicitation. However, your offer shall state, "The Contractor's certifications submitted under RFP SP0600-02-R-0024 remain valid."

Offerors are reminded that price escalation will be based on the methods outlined under Clause B19.19, ECONOMIC PRICE ADJUSTMENT (PC&S) (DESC MAR 2003) under Master Solicitation SP0600-02-R-0024. Offerors are also reminded to base their offer price on the average of the Platt's Jet Kero 54 US Gulf Spot Waterborne 5 day rolling average.

Point of contact for this acquisition is Leigh Gillette, Contract Specialist, at (703) 767-9530, or by facsimile at (703) 767-8506.

KATHRYN R. RISO

Contracting Officer Ground Fuels Division II Direct Delivery Fuels

Attachment

B19.19 ECONOMIC PRICE ADJUSTMENT (PC&S) (DESC MAR 2003)

- (a) WARRANTIES. The Contractor warrants that--
- (1) The unit prices set forth in the Schedule do not include allowances for any portion of the contingency covered by this clause; and
 - (2) The prices to be invoiced hereunder shall be computed in accordance with the provisions of this clause.
 - (b) **DEFINITIONS.** As used throughout this clause, the term--
 - (1) Base price means--
 - (i) The unit price offered for an item and included in the contract award schedule; or
- (ii) During any subsequent program year, either the effective contract price as of the start of the subsequent program year, or the price agreed upon as of the start of the subsequent program year.
- (2) **Base reference price** means the preselected reference price for an item as published on November 19. 2001 for the Gasoline and Diesel grades and on **January 5**, 2004 for the Jet fuel. In the event one or more applicable reference prices are not (or were not) published on the date shown, then the term **base reference price** means the preselected reference price for an item as published on the date nearest in time prior to the date shown.
- (3) **Reference price** means that published reference price or combination of published reference prices preselected by the Government for price adjustment for individual items by product, market area, and publication as specified in (f) below.
 - (4) Date of delivery means--
 - (i) FOR TANKER OR BARGE DELIVERIES.
 - (A) **F.O.B. ORIGIN.** The date and time vessel commences loading.
 - (B) **F.O.B. DESTINATION.** The date and time vessel commences discharging.
 - (ii) FOR ALL OTHER TYPES OF DELIVERIES. The date product is received on a truck-by-truck

basis.

- (5) Calendar week means a consecutive seven-day period, beginning with whichever day of the week is specified in (c)(1) below.
- (c) **ADJUSTMENTS.** Contract price adjustments shall be provided via notification through contract modifications and/or posting to the DESC web page under the heading **Doing Business with DESC** to reflect any price change pursuant to this clause.
 - (1) DAY OF PUBLICATION.
- (i) **PLATT'S BUNKERWIRE AND BUNKERFUELS REPORT.** For items employing Platt's Bunkerwire or Bunkerfuels Report as an escalator, the reference price in effect on the date of delivery shall be that item's preselected reference price that is published on the **Tuesday** of the calendar week in which the delivery is made, or, in the event there is no publication on Tuesday of that week, it shall be the item's preselected reference price published on the previous Tuesday.
- (ii) **OTHER PUBLICATIONS.** Except for items employing Platt's Bunkerwire or Bunkerfuels Report as an escalator, the reference price in effect on the date of delivery shall be that item's preselected reference price that is published on the **Monday** of the calendar week in which the delivery is made, or, in the event there is no publication in that week, it shall be the item's preselected reference price as last previously published.
- (2) **CALCULATIONS.** The prices payable hereunder shall be determined by adding to the award price the same number of cents, or fraction thereof, that the reference price increases or decreases, per like unit of measure. All arithmetical calculations, including the final adjusted unit price, shall be carried to six decimal places, truncated.
 - (i) If averages are published within a given publication, then these averages will be used.
 - (ii) If averages are not available within a given publication, manually calculated averages will be used.
 - (3) REVISION OF PUBLISHED REFERENCE PRICE. In the event--
 - (i) Any applicable reference price is discontinued or its method of derivation is altered substantially; or
- (ii) The Contracting Officer determines that the reference price consistently and substantially failed to reflect market conditions--

the parties shall mutually agree upon an appropriate and comparable substitute for determining the price adjustments hereunder. The contract shall be modified to reflect such substitute effective on the date the reference price was discontinued, altered, or began to consistently and substantially fail to reflect market conditions. If the parties fail to agree on an appropriate substitute, the matter shall be resolved in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract.

(4) **FAILURE TO DELIVER**. Notwithstanding any other provisions of this clause, no upward adjustment shall apply to product scheduled under the contract to be delivered before the effective date of the adjustment, unless the

Contractor's failure to deliver according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence within the meaning of paragraphs (f), Excusable Delays, and (m), Termination for Cause, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause of this contract, or is the result of an allocation made in accordance with the terms of the ALLOCATION clause of this contract, in which case the contract shall be amended to make an equitable extension of the delivery schedule.

- (5) **UPWARD CEILING ON ECONOMIC PRICE ADJUSTMENT.** The Contractor agrees that the total increase in any contract unit price pursuant to these economic price adjustment provisions shall not exceed <u>60</u> percent of the base price in any applicable program year (whether a single year or a multiyear program), except as provided hereafter.
- (i) If at any time the Contractor has reason to believe that within the near future a price adjustment under the provisions of this clause will be required that will exceed the current contract ceiling price for any item, the Contractor shall promptly notify the Contracting Officer in writing of the expected increase. The notification shall include a revised ceiling the Contractor believes is sufficient to permit completion of remaining contract performance, along with an appropriate explanation and documentation as required by the Contracting Officer.
- (ii) If an actual increase in the reference price would raise a contract unit price for an item above the current ceiling, the Contractor shall have no obligation under this contract to fill pending or future orders for such item, as of the effective date of the increase, unless the Contracting Officer issues a contract modification to raise the ceiling. If the contract ceiling will not be raised, the Contracting Officer shall so promptly notify the Contractor in writing.
- (d) **EXAMINATION OF RECORDS.** The Contractor agrees that the Contracting Officer or designated representatives shall have the right to examine the Contractor's books, records, documents, or other data the Contracting Officer deems necessary to verify Contractor adherence to the provisions of this clause.
- (e) **FINAL INVOICE.** The Contractor shall include a statement on the final invoice that the amounts invoiced hereunder have applied all decreases required by this clause.
 - (f) **PUBLICATIONS:** The following publication(s) is (are) used:

<u>PRODUCT</u>	<u>REFERENCE</u>	<u>PRICE</u>
REG UNL & PREMIUM	PLATT'S OILGRAM PRICE REORT	<u>\$0.4975</u>
GASOLINE / GASOHOL	* FIVE-DAY ROLLING AVERAGES	
	GASOLINE US MARKET	
	US GULF COAST, WATERBORNE	
	AVERAGE OF THE PRICE RANGE FOR REGULAR UNLI	EADED
ALL GRADES DIESEL FUEL / MGO	PLATT'S OILGRAM PRICE REORT	\$0.5335
	* FIVE-DAY ROLLING AVERAGES	
	GASOLINE US MARKET	
	US GULF COAST, WATERBORNE	
	AVERAGE OF THE PRICE RANGE FOR REGULAR UNLI	EADED
JET AVIATION	PLATT'S OILGRAM PRICE REORT	<u>\$0.9020</u>
	* FIVE-DAY ROLLING AVERAGES	
	GASOLINE US MARKET	
	US GULF COAST, WATERBORNE	
	AVERAGE OF THE PRICE RANGE FOR JET A	

^{*} Five Day's previous Friday. If there is no price effective for Friday, the five days will end with the immediate preceding day's price.

(DESC 52.216-9F27)

C16.69 FUEL SPECIFICATIONS (PC&S) (DESC FEB 2002)

Supplies delivered under this contract shall conform to all Federal, State, and local environmental requirements applicable to the geographic location of the receiving activity on the date of delivery. The list of such requirements contained in this contract is not intended to be a complete list, and the Contractor shall be responsible for determining the existence of all such

requirements at the time deliveries are made. Selected regional environmental requirements are highlighted in the SPECIFICATIONS (CONT'D) clause. In the event that a Federal, State, or local environmental requirement is more stringent than a specification contained in this contract, the Contractor shall deliver product that complies with the more stringent requirement. Product that fails to meet the more stringent requirement will be considered to be a nonconforming supply. Product(s) to be supplied shall fully meet the requirements of the applicable specification(s) as cited below.

NOTE: Gasoline, gasohol and reformulated gasoline Reid Vapor Pressure (RVP) specification requirements are seasonal and vary geographically throughout the United States. Therefore, Contractors are expected to know the local, State, or Federal RVP requirements of areas being supplied and comply with those requirements.

(a) GASOLINE, AUTOMOTIVE, UNLEADED, GRADES REGULAR, MIDGRADE, AND PREMIUM. Product shall conform to ASTM D 4814, as modified below.

(1) OCTANE REQUIREMENTS.

(i) Unleaded automotive gasoline shall meet the Anti-Knock Index (AKI) requirements shown in the table below.

		DESC	
		PRODUCT	
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	CODE	AKI, MINIMUM
9130-00-148-7103	Gasoline, Regular Unleaded	MUR	87
9130-01-272-0983	Gasoline, Midgrade Unleaded	MUM	89
9130-00-148-7104	Gasoline, Premium Unleaded	MUP	91

- (ii) Reductions for altitude and seasonal variations are allowed for all AKI values in accordance with figures X1.2 and X1.3 of ASTM D 4814.
- (iii) For regular unleaded gasoline, in addition to an AKI of 87 minimum, the MON must not be less than 82.

(2) OXYGENATE REQUIREMENTS.

- (i) In order to achieve minimum/maximum oxygen content limits specified per Federal, State, and local environmental requirements, supplies shall only include oxygenates that are permitted by environmental regulations applicable to the time and place of delivery.
- (ii) Blending of oxygenates into gasoline to meet oxygenated fuel requirements shall be accomplished by mechanical mixing or agitation in a tank, or by in-line blending, prior to loading the product into transport equipment, and the resultant product must beet contract requirements.
 - (3) See the SPECIFICATIONS (CONT'D) clause for additional regional gasoline requirements.
- (b) GASOHOL, AUTOMOTIVE, UNLEADED, GRADES REGULAR, MIDGRADE, AND PREMIUM. Products shall conform to Commercial Item Description (CID) A-A-52530 dated October 10, 1995, as modified below. In accordance with Executive Order 12261 of January 5, 1981, "Gasohol in Federal Motor Vehicles," Gasohol may be considered an acceptable substitute for Unleaded Gasoline. The Unleaded Gasoline items that permit the substitution of Gasohol are identified in the Schedule. Contractors are required to state, for each line item in their offer, whether Gasohol will be provided. Contractors will not be permitted to substitute Unleaded Gasoline under line items awarded as gasohol. Also, Contractors are not permitted to substitute gasohol for gasoline under line items awarded as gasoline, except when Government regulations mandate use of fuel containing an oxygenate for control of carbon monoxide pollution.

(1) OCTANE REQUIREMENTS.

(i) Unleaded automotive gasohol shall meet the AKI requirements shown in the table below.

		DESC	
		PRODUCT	
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	CODE	<u>AKI, MINIMUM</u>
9130-01-090-1093	Gasohol, Regular Unleaded	GUR	87
9130-01-355-2393	Gasohol, Midgrade Unleaded	GUM	89
9130-01-090-1094	Gasohol, Premium Unleaded	GUP	91

(ii) Reductions for altitude and seasonal variations are allowed for all AKI values in accordance with figures X1.2 and X1.3 of ASTM D 4814.

(iii) For regular unleaded gasohol, in addition to an AKI of 87 minimum, the MON must not be less than 82.

(2) OXYGENATE REQUIREMENTS.

- (i) Ethanol concentration shall be between 9 and 11 volume percent.
- (ii) Blending of ethanol into gasoline to make gasohol shall be accomplished by mechanical mixing or agitation in a tank, or by in-line blending, prior to loading the product into transport equipment, and the resultant product must meet contract requirements.
 - (3) See the SPECIFICATIONS (CONT'D) clause for additional regional requirements affecting gasohol.
- (c) REFORMULATED GASOLINE, AUTOMOTIVE, UNLEADED, GRADES REGULAR, MIDGRADE, AND PREMIUM. Product shall conform to ASTM D 4814, as modified by the Environmental Protection Agency (EPA) requirements detailed in 40 CFR Part 80 "Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline; Final Rule," published in the February 16, 1994 Federal Register. In part, these regulations mandate that Phase II complex model reformulated gasoline must meet three emissions performance requirements when compared to the baseline gasoline marketed by a refiner in 1990: a 27 percent reduction in emissions of volatile organic compounds (VOCs), a 22 percent reduction in emissions of toxic pollutants, and a 7 percent reduction in emissions of oxides of nitrogen (NOx). Further, these regulations mandate that Phase II complex model reformulated gasoline must meet three compositional requirements: 1.5 weight percent minimum oxygen; 1.3 volume percent maximum benzene; and no heavy metals (lead and manganese are examples of such metals).

(1) OCTANE REQUIREMENTS.

(i) Reformulated gasoline shall meet the AKI requirements shown in the table below.

			DESC	
			PRODUCT	
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	_	CODE	AKI, MINIMUM
9130-01-388-4080	Reformulated Gasoline, Regular		MRR	87
9130-01-388-4513	Reformulated Gasoline, Midgrade	MMR	89	
9130-01-388-4524	Reformulated Gasoline, Premium		MPR	91

(ii) Reductions for altitude and seasonal variations are allowed for all AKI values in accordance with figures X1.2 and X1.3 of ASTM D 4814.

(2) OXYGENATE REQUIREMENTS.

- (i) In order to achieve minimum/maximum oxygen content limits specified per Federal, State; and local environmental requirements, suppliers shall only include oxygenates that are permitted by environmental regulations applicable to the time and place of delivery.
- (ii) Blending of permissible oxygenate into reformulated gasoline shall be accomplished by mechanical mixing or agitation in a tank, or by in-line blending, prior to loading the product into transport equipment, and the resultant product must meet contract requirements.
 - (3) See the SPECIFICATIONS (CONT'D) clause for additional regional reformulated gasoline requirements.
- (d) **DIESEL FUEL.** ALL FACILITIES REQUIRING DIESEL FUEL FOR ON-HIGHWAY USE SHALL BE SUPPLIED PRODUCT WITH A MAXIMUM SULFUR CONTENT OF 0.05 WEIGHT PERCENT.

(1) APPLICABLE TO ALL DIESEL GRADES.

(i) ADDITIVES.

- (A) A fuel stabilizer additive conforming to MIL-S-53021 may be blended into the fuel to improve the suitability of fuel for long term storage. Permissible additive concentrations are specified in the latest revision of QPL-53021.
- (B) A corrosion inhibitor/lubricity improver additive may be blended into the fuel to inhibit corrosion and improve fuel lubricity. Permissible additive concentration limits are specified in the latest revision of QPL-25017.
- (C) A fuel system icing inhibitor may be blended into the fuel to purge small quantities of water from the fuel and prevent the formulation of ice crystals. The additive concentration shall not exceed 0.15 volume percent when tested in accordance with the ASTM method D 5006.
- (ii) **BLENDING.** Blending one grade of diesel fuel with another grade, or other compatible components, to produce a different grade or a variation within a grade is permitted. However, such blending shall be accomplished by mechanical mixing or agitation in a tank, or in-line blending, prior to loading the product into transport equipment, and the resultant product must meet all the requirements of the desired fuel.

- (iii) **CLOUD POINT.** Unless a more restrictive cloud point limit is specified in the contract schedule, the cloud point shall be equal to or lower than the tenth percentile minimum ambient temperature specified in Appendix X4 of ASTM D 975.
- (iv) **DYE.** As a means of identification, the Internal Revenue Service (IRS) requires that a red dye, identified as Solvent Red 164 (alkyl derivatives of azo benzene azo naphthol), must be added to all nontaxable diesel and all nontaxable kerosene used for purposes other than military jet fuel. The definitions of diesel and kerosene are provided in 26 CFR Section 48.4081-1. The minimum concentration is provided in 40 CFR Part 80.
- (2) APPLICABLE TO GRADES DL2, DL1, DLS, DLW, DF2, AND DF1 ONLY. Product shall conform to the Commercial Item Description A-A-52557A, Fuel Oil, Diesel, For Posts, Camps, and Stations, dated January 16, 2001. Fuel stabilizer additive, corrosion inhibitor/lubricity improver, and fuel system icing inhibitor are not mandatory additives. Product classification is shown below.

LOW SULFUR GRADES

		DESC	MAXIMUM	
		PRODUCT	SULFUR	
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	CODE	CONTENT	RED DYE
9140-00-000-0184	Grade Low Sulfur No. 2-D	DL2	0.05 wt%	No
9140-00-000-0185	Grade Low Sulfur No. 1-D	DL1	0.05 wt%	No
9140-01-413-7511	Grade Low Sulfur No. 2-D	DLS	0.05 wt%	Yes
9140-01-412-1311	Grade Low Sulfur No. 1-D	DLW	0.05 wt%	Yes
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HIGH SULFUR GRADES

		DESC	MAXIMUM	
		PRODUCT	SULFUR	
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	CODE	CONTENT	RED DYE
9140-00-286-5294	Grade No. 2-D	DF2	0.50 wt%	Yes
9140-00-286-5286	Grade No. 1-D	DF1	0.50 wt%	Yes

(3) APPLICABLE TO GRADES LS2, LS1, LSS, LSW, HS2, AND HS1 ONLY. Product shall conform to commercial specification ASTM D 975. In accordance with this specification, product shall be visually free of undissolved water, sediment, and suspended matter. Product classification is shown below:

LOW SULFUR GRADES

NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	DESC PRODUCT <u>CODE</u>	MAXIMUM SULFUR CONTENT RED DYE
9140-01-398-0697	Grade Low Sulfur No. 2-D	LS2	0.05 wt% No
9140-01-398-1130	Grade Low Sulfur No. 1-D	LS1	0.05 wt% No
9140-01-413-4919	Grade Low Sulfur No. 2-D	LSS	0.05 wt% Yes
9140-01-413-7494	Grade Low Sulfur No. 1-D	LSW	0.05 wt% Yes
HIGH SULFUR GR	ADES		
		DESC	MAXIMUM
		PRODUCT	SULFUR
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	CODE	CONTENT RED DYE
9140-01-398-1395	Grade No. 2-D	HS2	0.50 wt% Yes
9140-01-398-1422	Grade No. 1-D	HS1	0.50 wt% Yes

- (4) **APPLICABLE TO DIESEL GRADE #1 ONLY.** DESC frequently requires #1 diesel fuel grades when it is anticipated that the fuel may be exposed to temperatures below 10 degrees Fahrenheit (-12 degrees Celsius). This product shall conform to ASTM Specification D 975 or CID A-A-52557. Contractors electing to deliver kerosene to meet #1 diesel fuel requirements must--
- (i) Provide certification to the Contracting Officer prior to 1 October of each year that the kerosene will meet #1 diesel fuel specifications, including specifically, viscosity and cetane index; **AND**
- (ii) For each delivery, submit relevant documents (delivery tickets, bills of lading, etc.) indicating that #1 diesel fuel is being delivered.
- (e) FUEL OIL, BURNER, GRADES 1, 2, 4(LIGHT), 4, 5(LIGHT), 5(HEAVY), AND 6 (VIRGIN FUEL OILS). Product shall conform to ASTM D 396, as modified by the requirements of paragraphs (1) through (7) below. Product classification is shown in the table below.

		DESC	
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	PRODUCT CODE	RED DYE
9140-00-247-4366	Fuel Oil, Burner 1	FS1	Yes
9140-00-247-4365	Fuel Oil, Burner 2	FS2	Yes
9140-01-107-6139	Fuel Oil, Burner 4 (Light)	FL4	Yes
9140-00-247-4360	Fuel Oil, Burner 4	FS4	No
9140-01-058-4431	Fuel Oil, Burner 5 (Light)	FL5	No
9140-00-247-4359	Fuel Oil, Burner 5 (Heavy)	FS5	No
9140-00-247-4354	Fuel Oil, Burner 6	FS6	No

- (1) These residual grades of burner fuel oil (Grades 4, 4(Light), 5(Light), 5(Heavy), and 6) shall consist of fossil-derived hydrocarbon stock. They may not contain used oil or other recycled petroleum components.
- (2) **SULFUR REQUIREMENT.** Refer to the Schedule for the maximum allowable sulfur content of Burner Oil, Grades 4, 4(Light), 5(Light), 5(Heavy), and 6. The maximum allowable sulfur content for Burner Oil, Grades 1 and 2, shall be 0.5 weight percent or State/local environmental requirements, whichever is more stringent.
- (3) **NITROGEN REQUIREMENT.** The nitrogen content shall be tested using ASTM D 3228, Total Nitrogen in Lubricating Oils and Fuel Oils by Modified Kjeldahl Method, or ASTM D 4629, Trace Nitrogen in Liquid Petroleum Hydrocarbons by Chemiluminescence Detection. The nitrogen content is used to determine nitrous oxide (NOx) emissions in boiler systems as determined by State/local environmental agencies. The requirement applies for line items with burner oil #4, burner oil #5 (heavy), burner oil #5 (light), and burner oil #6. The Contractor is required upon request from the Government to provide a copy of the test report, within two working days, that states the actual nitrogen content of fuel delivered.
- (4) Blending of various compatible grades of burner oil to produce an intermediate grade is permitted; however, such blending shall be accomplished by mechanical mixing or agitation in a tank, or by in-line blending, prior to loading the product into transport equipment, and the resultant product must meet all the requirements of the grade produced.
- (5) The maximum allowable ash content for Burner Oil, Grade 6, shall be .50 weight percent using ASTM D 874, Standard Test Method for Sulfated Ash from Lubricating Oils and Additives.
- (6) Under United States regulations, Grades No. 1, 2, and 4 (Light) are required by 40 CFR Part 80 to contain a sufficient amount of the dye Solvent Red 164 so its presence is visually apparent. At or beyond terminal storage tanks, they are required by CFR Part 48 to contain the dye Solvent Red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of the solid dye standard Solvent Red 26.
- (7) **APPLICABLE TO FUEL OIL, BURNER, GRADE #1 ONLY**. This product shall conform to ASTM D 396. Contractors electing to deliver kerosene (red dye) to meet #1 burner oil requirements must--
- (i) Provide certification to the Contracting Officer prior to 1 October of each year that the kerosene will meet #1 burner oil specifications, including specifically, viscosity, distillation, density and pour point; AND
- (ii) For each delivery, submit relevant documents (delivery tickets, bills of lading, etc.) indicating that #1 burner oil is being delivered.
- (iii) All kerosene delivered to meet #1 burner oil must be tax free, i.e., dyed in accordance with IRS regulations.

(f) FUEL OIL, BURNER, CONTAINING RECYCLED USED OILS, GRADES 4, 4(LIGHT), 5, 5(LIGHT), AND 6. Product shall conform to ASTM D 396, as modified by the requirement of paragraphs (1) through (7) below. Product classification is shown in the table below.

NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	DESC <u>PRODUCT CODE</u>	RED DYE
9140-01-468-9083	Fuel Oil, Burner 4 (Light)	R4L	Yes
9140-01-468-9135	Fuel Oil, Burner 4	RF4	No
9140-01-468-9157	Fuel Oil, Burner 5 (Light)	R5L	No
9140-01-468-9147	Fuel Oil, Burner 5 (Heavy)	RF5	No
9140-01-468-9164	Fuel Oil, Burner 6	RF6	No

- (1) **SULFUR REQUIREMENT.** Refer to the Schedule for the maximum allowable sulfur content of Burner Oil, Grades 4, 4(Light), 5(Light), 5(Heavy), and 6. The maximum allowable sulfur content for Burner Oil, Grades 1 and 2, shall be 0.5 weight percent or State/local environmental requirements, whichever is more stringent.
- (2) **NITROGEN REQUIREMENT.** The nitrogen content shall be tested using ASTM D 3228, Total Nitrogen in Lubricating Oils and Fuel Oils by Modified Kjeldahl Method, or ASTM D 4629, Trace Nitrogen in Liquid Petroleum Hydrocarbons by Chemiluminescence Detection. The nitrogen content is used to determine nitrous oxide (NOx) emissions in boiler systems as determined by State/local environmental agencies. The requirement applies for line items with burner oil #4, burner oil #5 (heavy), burner oil #5 (light), and burner oil #6. The Contractor is required upon request from the Government to provide a copy of the test report, within two working days, that states the actual nitrogen content of fuel delivered.
- (3) These residual grades of burner fuel oil (Grades 4, 4(Light), 5(Light), 5(Heavy), and 6) shall consist of fossil-derived hydrocarbon stock. The product shall meet the following additional requirements:

CON	ALLOWABLE NSTITUENT/PROPERTY	TEST METHOD ¹	REQUIRED <u>DETECTION LIMIT</u>	MAXIMUM LEVEL
1.	Arsenic	EPA SW-846 6010 ^{2,3,4}	0.5 ppm max	5 ppm max
2.	Cadmium	EPA SW-846 6010 ^{2,3} 0.2 ppm ma	x 2 ppm max	
3.	Chromium	EPA SW-846 6010 ^{2,3} 1.0 ppm ma	x 10 ppm max	
4.	Lead	EPA SW-846 6010 ^{2,3} 10 ppm max	x 100 ppm max	
5.	Total Halogens	EPA SW-846 5050/9056 ⁵	NA	1000 ppm max
6.	Flash Point	ASTM D 93	NA	100°F (38°C) min

NOTES:

- 1. Choose the appropriate sample preparation method as outlines in EPA SW-846, in order to achieve required detection limits.
- 2. Background correction must be performed for test method 6010. Laboratory control sample(s) (LCS) containing target analytes must be run for each Quality Control (QC) batch. The LCS must be matrix matched and made with commercially available National Institute of Standards and Technology (NIST) traceable organo-metallic standards. LCS recovery must fall between 80-120 percent. Adherence to all required method QC must be documented and available for review.
- 3. If the required detection limit of 0.5 ppm cannot be achieved by test method 6010, test method 7060 may be used in order to achieve that requirement. Background correction must be performed. Zeeman or Smith-Hieftje interference correction will be used. Deuterium interference correction will not be accepted under any circumstance. An analytical spike must be performed for each sample. LCS must be prepared and analyzed as outlined in Note 2 above. Adherence to all required method QC must be documented and available for review.

- 4. Test method 6020 may be used in place of test method 6010. LCS must be prepared and analyzed as outlined in note 2 above. Adherence to all required method QC must be documented and available for review.
- 5. A bomb blank must be run and analyzed for each QC batch. A LCS of an NIST traceable organic chloride must be run with each QC batch. LCS recovery must fall between 80-120 percent. Adherence to all required method QC must be documented and available for review.
- (4) The above specification requirements reflect the Federal EPA specifications for used oil contained in 40 CFR Parts 266 and 279. If State or local requirements for used oil are more stringent, the fuel oil offered will be required to comply with such. Copies of SW-846 (Test Method for Evaluating Solid Waste) can be obtained from the U.S. Government Printing Office, Washington, DC 20422, stock number 955-001-00000-1. Test methods must be run by a State certified laboratory.
- (5) The supply of off-specification used oil as described in EPA regulations, 40 CFR Parts 266 and 279, is not acceptable.

A CONTRACTOR WILL NOT BE PERMITTED TO SUPPLY PRODUCT CONTAINING USED OIL UNLESS (1) IT DISCLOSED IN ITS OFFER THAT PRODUCT WOULD CONTAIN USED OIL, AND (2) THE SUPPLY OF PRODUCT

ATTN: DESC-BPE ROOM 2954 DEFENSE ENERGY SUPPORT CENTER 8725 JOHN J KINGMAN ROAD SUITE 4950 FORT BELVOIR VA 22060-6222

used oil standards, contained in 40 CFR Parts 266 and 279, or State/local requirements, whichever is more stringent, for all

Offeror's EPA Identification Number:

- (6) Blending of various compatible grades of burner oil to produce an intermediate grade is permitted; however, such blending shall be accomplished by mechanical mixing or agitation in a tank, or by in-line blending, prior to loading the product into transport equipment, and the resultant product must meet all the requirements of the grade produced.
- (7) The maximum allowable ash content for Burner Oil, Grade 6, shall be .50 wt %, using ASTM D 874, Standard Test Method for Sulfated Ash from Lubricating Oils and Additives.
 - (g) **KEROSENE.** Product shall conform to ASTM D 3699. Classification of product is shown below.

LOW SULFUR GRADES

contract deliveries under the line items identified above to--

		DESC	MAXIMUM	
		PRODUCT	SULFUR	
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	CODE	<u>CONTENT</u>	RED DYE
9140-01-292-4460	Kerosene, Grade No. 1-K	KS1	0.04 wt% max	No
9140-01-461-3989	Kerosene, Grade No. 1-K	KSR	0.04 wt% max	Yes

HIGH SULFUR GRADES

		DESC	MAXIMUM	
		PRODUCT	SULFUR	
NATIONAL STOCK NUMBER	PRODUCT NOMENCLATURE	CODE	<u>CONTENT</u>	RED DYE
9140-00-242-6748	Kerosene, Grade No. 2-K	KSN	0.30 wt% max	Yes

NOTE: The IRS requires taxation of No. 1-K and No. 2-K kerosene upon removal from the terminal unless the kerosene is indelibly (cannot be removed) dyed or used for military jet fuel. These requirements, part of 26 CFR 48 - Manufacturers and Retailers Excise Taxes, were published in the July 1, 1998, Federal Register. Only undyed (taxable) No. 1-K kerosene is suitable for use in nonflued (unvented) kerosene burner appliances. No. 2-K kerosene (dyed or undyed) is unsuitable for nonflued (unvented) kerosene burner appliances.

The color test requirement is deleted if red dye has been added in compliance with IRS regulations; however, the resulting fuel/dye blend must have a red tint.

(DESC 52.246-9FW5)

G150.03-1 PAPERLESS ORDERING AND RECEIPT TRANSACTION SCREENS (PORTS) INTERNET APPLICATION (DESC DEC 2001) APPLICABLE TO DoD ACTIVITES ONLY.

(a) **CONTRACTOR PASSWORD.** The Contractor will furnish an email distribution list to the DESC Contracting Officer providing name(s), email address(es), phone and facsimile number(s) for all those individuals that may need to receive email notification of orders. The DESC Contracting Officer will furnish the Contractor with a password. Supplementing the "user name" (bidder code), the Contractor shall use this password to access contract-specific web pages and the Paperless Ordering and Receipt Transaction Screens (PORTS) Internet application. This includes access to electronically signed written orders (SF 1449), as described in (b) below. The Contractor shall also use the password to access PORTS for transmitting receipt documents to the Activity and for transmitting invoices to the payment office, as identified in (d) below.

(b) PREPARATION AND TRANSMISSION OF ORDERS AND CALLS AGAINST ORDERS.

- (1) The Government may issue an order for a specific delivery or a series of deliveries (e.g., several deliveries during a week). The Government may also elect to issue an order covering a longer period (including monthly orders) and make periodic calls against these orders designating specific delivery dates, times, and quantities.
- (2) Orders, and calls against orders, may be issued orally or in writing. An oral delivery order for fuel shall be considered issued by the Government when it is verbally assigned a delivery order number. For all orders, the appropriate ordering office/officer will provide the Contractor, via the PORTS Internet application, with an electronically signed written order, SF 1449, within 24 hours or one business day after issuing the oral order. (Once the Ordering Officer has completed the web page order, an email will be sent to the Contractor to provide notice that the order is available on the contract-specific web page. The order will also be submitted to the payment office.) An oral order shall provide the required advance notice to the Contractor and the following information: Order number; contract number; item number; quantity; delivery location; any applicable taxes, which should be billed as a separate item on the invoice; and the required delivery date. Regardless of the unit price cited on the written order, the office designated to make payments on the written order will pay the applicable unit price in effect under the ECONOMIC PRICE ADJUSTMENT (PC&S) clause.
- (3) Calls against previously issued orders must be confirmed in writing within 24 hours or one business day via email message. The email confirmation will reference the previously issued order number and item number and designate specific delivery location, dates, and quantity to be delivered against that order.
- (4) The Contractor's nonreceipt of a written or electronic confirmation of an oral order or oral call against a written or electronic order does not itself relieve the Contractor from its obligation to perform in accordance with the oral order or oral call against a written or electronic order. The Contractor should contact the DESC Contracting Officer if problems are experienced with receipt of the electronic or written confirmation.

(c) COMMERCIAL RECEIPTS.

- (1) The Contractor shall provide a commercial receipt (bill of lading, metered ticket, or delivery ticket) upon completing delivery. The Government representative may date and sign the commercial receipt and will be provided with a legible copy. The following information shall be stated on the commercial receipt:
 - (i) Item number;
 - (ii) Order number;
 - (iii) Type of fuel delivered;
 - (iv) Date of the delivery into the Government's tank(s);
- (v) Delivered quantity and, if volume correction is required in accordance with the DETERMINATION OF QUANTITY (PC&S) clause, the fuel temperature and API gravity. If temperature compensating meters are used, only the API gravity and delivered quantity are recorded;
 - (vi) Tank identifier determined by the base; and
 - (vii) Any other required information specified in the narrative of the Schedule for the item.
- (2) The Contractor will maintain all signed receipts as evidence of delivery and will provide them to the Government upon request, as dictated by the CONTRACT TERMS AND CONDITIONS COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) clause. The records will be annotated with "NONTAXABLE USE ONLY. PENALTY FOR TAXABLE USE" where applicable.
- (d) PREPARATION AND TRANSMISSION OF THE MATERIAL INSPECTION AND RECEIVING REPORT (DD FORM 250)/INVOICE. At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix F of the Defense FAR Supplement, Material Inspection and Receiving Report, except as noted in this clause. The Contractor, or its designee, shall key the following information from the commercial receipt(s) into the contract-specific web pages for generation of the continuation page and the first page of the DD Form 250 document upon accessing the web screens per the instructions to be provided on the DESC homepage.
- (1) On the first page of the web screen for creating a new DD Form 250, the Contractor will select the appropriate line item and order/amendment number from a pull-down list (which already depicts the associated contract number, requisition number, and mode of delivery). The Contractor must insert the shipment date reflecting the date fuel was actually delivered. On the next screen, the Contractor will enter a unique invoice number, confirm the escalated unit price (which may also be corrected if applicable) and any discount terms offered other than net 30 days, and select the appropriate method of quantity determination (either loading rack method or nonloading rack method). The loading rack method is selected if the quantity delivered is determined based on loading rack meter tickets from the terminal; the nonloading rack method is selected if quantity determination is based on any other method as specified in the DETERMINATION OF QUANTITY (PC&S) clause.
- (2) On the next screen, the Contractor will enter sequentially the following information from each commercial ticket, which will be depicted in three columns on the DD Form 250 continuation page:
 - (i) The commercial ticket number;
- (ii) The quantity indicated on the commercial receipt, (system will round quantity up or down), determined in accordance with the DETERMINATION OF QUANTITY clause; and
- (iii) The tank identifier determined by the Activity (such as a building number). This tank identifier is required only for auto-fill items.

The total volume delivered to the Activity as input by the Contractor will automatically be entered into Block 17 of the DD Form 250 as a whole number; the required sequential shipment number under the order will automatically be entered into Block 2. If there is disagreement between the Contractor and the Government as to the quantity delivered, the DESC Contracting Officer will be promptly notified. (See the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) clause.)

- (3) Upon completion of the DD Form 250/invoice web screen document, the Contractor or designee will key the submission for processing, which automatically triggers two actions:
- (i) An email message to the Activity. The email message will request approval of the DD Form 250 and inform the Activity to access the web page to accomplish this by electronic signature or it will specify order number, shipment date and number, item, quantity shipped and all delivery tickets that apply.
- (ii) An electronic submission to the payment office and Contractor notification of that invoice submission. The invoice transaction must be received no later than 5:30 p.m. to be considered received that day. Invoices received after 5:30 p.m. shall be considered received the next United States Government business day.

- (4) **AIR FORCE ONLY:** The Government's Authorized Representative will either—
- (i) Verify the invoiced amount and return an email message confirming the quantity invoiced. The Contractor will receive an email message from the activity that the invoiced amount has been confirmed; OR
- (ii) Dispute the quantity being invoiced. Advise the Contractor by email of the reason (such as shipment date or quantity error). In this case, the Contractor will then submit a revised DD Form 250/invoice to the Activity (and to the payment office)via PORTS; the Contractor need only key in the data field(s) requiring correction and resubmit for processing. The DD Form 250 must be resubmitted within 24 hours or one business day of the Activity's notification. If the Contractor disagrees with the Activity's notification of disagreement, the Contractor may contact the DESC Contracting Officer. (See the CONTRACT TERMS AND CONDITIONS COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) clause.
- (iii) If any errors are discovered on the Contractor's DD Form 250 after submission to the Activity, but before either confirmation or notification of disagreement, the Contractor will promptly correct by clicking on the "Correct Submitted DD Form 250/invoice" key and entering corrections of any prior errors. When submitted to the Activity for verification/confirmation, the DD Form 250/invoice document is automatically labeled with the words "CORRECTED COPY." As in (d)(4)(i) and (ii) above, the Contractor is notified with automatic posting of the electronic transmission to the payment office.
 - (5) OTHER DoD ONLY: The Government's Authorized Representative will either—
- (i) Approve or accept the DD Form 250 document by electronic signature and submit the document via the PORTS Internet application to the payment office. The Contractor will receive an email message via the Internet application that the document has been approved and submitted to the payment office; OR
- (ii) Reject the DD Form 250 document, advising the Contractor by email of the reason for rejection (such as shipment date or quantity error). In this case, the Contractor will then submit a revised DD Form 250/invoice to the Activity (and to the payment office) via PORTS; the Contractor need only key in the data field(s) requiring correction. If the Contractor fails to submit a revised DD Form 250 within 24 hours or one business day of the Activity's rejection notification based on discrepancy in quantity or shipment date, in order to avoid potential delays in payment the Activity may proceed to change either the quantity or shipment date to that which the Activity had asserted. These changes will be forwarded to both the payment office and the Contractor. If the Contractor still disagrees with the Activity's change(s), the Contractor may contact the DESC Contracting Officer. (See the CONTRACT TERMS AND CONDITIONS COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) clause.)
- (iii) If any errors are discovered on the Contractor's DD Form 250 after submission to the Activity, but before either approval or rejection, the Contractor will promptly advise the Activity by either telephone or email in order that the document can be rejected with an accurate notation and then revised (see (d)(5)(ii) above) as soon as possible.
- (iv) Upon signature of approval/acceptance on the DD Form 250 by the Government representative, any corrections to the document must be performed via the web page. The Contractor will click on the "Correct Submitted DD Form 250/Invoice" key and enter corrections of any prior errors. When submitted to the Activity for approval, the DD Form 250/invoice document is automatically labeled with the words "CORRECTED COPY." As in (d)(5)(i) and (ii) above, the Contractor is notified, with automatic posting of the electronic transmission to the payment office.
- (6) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment.
- (7) The Government will not be liable to the Contractor for any incidental or consequential damages resulting from any delay, omission, or error in the transmission or receipt of invoices under the Internet application.
- (8) Electronic data transmitted by the Internet application will be admissible as evidence on the same basis as customary paper documents. The parties will be legally bound by the electronic documents.

(e) REQUIRED USE OF PORTS INTERNET APPLICATION.

- (1) Use of PORTS, as described above, is required <u>except</u> in the cases indicated in (g) below and as identified exceptions to electronic invoicing under the CONTRACT TERMS AND CONDITIONS COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) ADDENDUM clause.
- (2) In the event there is an interruption of PORTS service, fax/paper invoices may be submitted to DFAS Columbus only after the Contractor has contacted the DESC Contracting Officer and is given authorization to do so. A four-digit confirmation code will be provided by the DESC Contracting Officer and must be inserted (handwritten or typed) on each fax/paper invoice. DFAS Columbus will return any fax/paper invoice that does not contain the four-digit confirmation code. Fax/paper invoices must contain information required for a proper invoice per instructions contained in the CONTRACT TERMS AND CONDITIONS COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) clause. Once the difficulties with PORTS has been resolved, the Contractor must revert to using PORTS to invoice.

(f) **PAYMENT**.

- (1) Payment shall be made in accordance with the terms as stated in the CONTRACT TERMS AND CONDITIONS COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) clause. Notwithstanding any permissible variation percentage between the ordered and delivered quantity, payment is authorized for a percentage not to exceed 120 percent of the ordered quantity.
- (2) Payment terms for an invoice received via electronic PORTS submission by the payment office will be net 30 days from date of receipt of a proper invoice. See (d)(3) above. Payment terms for invoices other than by the electronic PORTS transmission will also be net 30 days from receipt of a proper invoice unless a discount is offered and accepted by the payment office.
- (g) INVOICING DETENTION AND DEMURRAGE COSTS. Detention costs, allowable only on tank truck deliveries (not applicable to multiple drop tank truck or any tank wagon deliveries), and demurrage costs for barge/tanker deliveries will be the sole responsibility of the Activity incurring them. The Contractor will submit invoices for detention or demurrage costs directly to the Activity receiving the product. These provisions are applicable to DLA-owned/capitalized as well as non-DLA-owned/noncapitalized products. If the receiving activity is an Army activity, a copy of the detention/demurrage cost invoice must also be furnished to the following address:

COMMANDER US ARMY PETROLEUM CENTER SATPC-L
NEW CUMBERLAND PA 17070-5008

(DESC 52.232-9FH6)

- G150.06 SUBMISSION OF INVOICES FOR PAYMENT (DOMESTIC PC&S) (DESC JUL 2003)
- NOTE 1: FOR FACSIMILE INVOICING, see the SUBMISSION OF INVOICES BY FACSIMILE clause.
- **NOTE 2**: See paragraph (c) for invoicing for DETENTION/DEMURRAGE costs.
- **NOTE 3**: INVOICES WILL REFLECT QUANTITIES IN WHOLE NUMBERS AND SHALL BE ROUNDED AS APPLICABLE. Example: 7,529.4 = 7,529 or 7,529.5 = 7,530.
- (a) INVOICING OF NON-PORTS (PAPERLESS ORDERING AND RECEIPT TRANSACTION SCREENS) ORDERS PLACED BY ARMY, NAVY (including Marines), AIR FORCE, AND OTHER DoD ACTIVITIES (including Alaska, and Hawaii).
- (1) **PAYING OFFICE**. Invoices for product paid with Defense Logistics Agency/Defense Energy Support Center (DESC) funds, as cited on the order, will be paid by DESC and should be mailed to--

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER STOCK FUND DIRECTORATE FUELS ACCOUNTING AND PAYMENTS DIVISION ATTN: DFAS-BVDFP/CC P.O. BOX 182317 COLUMBUS, OH 43218-6252

(2) CERTIFICATION OF RECEIPT.

- (i) Receiving activity personnel will certify the receipt of fuel by preparing and signing one of the following documents:
 - (A) Standard Form 1449, Solicitation/Contract/Order for Commercial Items; or
 - (B) DD Form 1155, Order for Supplies or Services; or
 - (C) DD Form 250, Material Inspection and Receiving Report; or
- (D) DD Form 250-1, Tanker/Barge Material Inspection and Receiving Report (the Contractor will prepare and the activity responsible for signing will acknowledge receipt of fuel for tanker and barge deliveries only).

(ii) Payments to the Contractor will be based on the receipt of the "paying copies" of the receiving report to DESC-FII, Fort Belvoir, VA, and payment will be made in accordance with the terms of the contract.

(iii) PC&S DELIVERIES.

- (A) Overbillings--
- (a) That are less than or equal to 0.5 percent of the quantity listed on the receiving document will be paid as originally invoiced by the Contractor when the overbilled quantity is solely a result of a difference in measurement techniques.
- (b) That exceed 0.5 percent of the quantity listed on the receiving document will be paid based on the corrected quantity as determined by the activity and annotated on the activity's receiving document.
 - (B) Underbillings will be paid as invoiced.
- (C) Notwithstanding any permissible variation percentage, payment is authorized for a percentage not to exceed 120 percent of the ordered quantity. Payment shall be made for quantity within this allowable variation listed on the receiving document as received and accepted by the activity and invoiced by the Contractor.
- (iv) The receiving activity will transmit one paying copy of the applicable form listed in (i) above to DESC-FII, Fort Belvoir, VA, within two working days after receipt of product.

(3) SUBMISSION OF INVOICES.

- (i) The Contractor shall submit an invoice for each item for no more or less than the total daily delivered quantity at a particular activity.
- (ii) Invoices submitted for payment shall be submitted in duplicate. The submission shall include an original invoice clearly marked **ORIGINAL** and one copy clearly marked **INVOICE COPY**. A carbon copy may be submitted as an original provided it is clearly marked **ORIGINAL** as stated above.

(iii) COURIER DELIVERY OF INVOICES.

(A) Couriers, acting on behalf of Contractors, must deliver Contractor invoices being submitted for payment to the following mailroom street address:

DEFENSE FINANCE AND ACCOUNTING SERVICE - COLUMBUS CENTER ATTN: DFAS-BVDFP/CC 3990 EAST BROAD STREET, BLDG 21 COLUMBUS, OH 43213-1152

(B) Invoices submitted by courier to the above address will be handled in a timely manner.

(b) INVOICING OF ORDERS PLACED BY ALL OTHER FEDERAL AGENCIES.

- (1) **PAYING OFFICE.** Invoices shall be forwarded to the applicable paying office in accordance with instructions contained on the order.
- (2) SUBMISSION OF INVOICES (except for the United States Postal Service). On orders placed by activities of Federal Departments other than those covered under (a) above, invoices for all deliveries shall be prepared and submitted as instructed by those activities on the order by the Ordering Officer. Such activities placing orders under this contract will furnish the Contractor with the name and proper address of the activity to whom invoices shall be rendered. Tax exemption certificates shall be processed in accordance with procedures stated in the TAX EXEMPTION CERTIFICATES clause.
 - (c) SUBMISSION AND CERTIFICATION OF INVOICES FOR THE UNITED STATES POSTAL
- **SERVICE.** Certification of Invoice. The Contractor agrees that submission of an invoice to the Government for payment is a certification that the invoiced quantities have been delivered in accordance with instructions issued by the United States Postal Service's Supply Management Offices. The Contractor shall submit the invoices for United States Postal Service activities to the designated United States Postal Service Certifying Facility stated in the contract (this is typically the delivery location for fuel, unless otherwise noted). The United States Postal Service Certifying Facility will verify and certify that the invoice quantities and price are accurate for payment. Upon certification, the United States Postal Service Certifying Facility will submit the invoice to the applicable Paying Office (the San Mateo Accounting Service Center). The payment due date will be 30 days after the United States Postal Service Certifying Facility has received the invoice. If the designated United States Postal Service Certifying Facility fails to annotate the invoice with the actual date of receipt, the invoice payment due date shall be the 30th day after the date of the Contractor's invoice.
- (d) **INVOICING DETENTION AND DEMURRAGE COSTS.** Detention costs, allowable only on tank truck deliveries (not applicable to multiple drop tank truck or any tank wagon deliveries), and demurrage costs for barge/tanker deliveries will be the sole responsibility of the activity incurring them. Invoices for detention costs will be submitted by the

Clause/Provision Attachment to SP0600-02-R-0024-0001

Contractor directly to the activity receiving the product. If the receiving activity is an Army activity, a copy of the detention or demurrage cost invoice must also be furnished to the following address:

COMMANDER, US ARMY PETROLEUM CENTER ATTN: SATPC-L NEW CUMBERLAND PA 17070-5008

(DESC 52.232-9F90)

G150.11 SUBMISSION OF INVOICES BY FACSIMILE (DESC JUN 2003)

NOTE 1: **FOR GROUND FUELS (PC&S) CONTRACTS:** This clause applies only to items paid by DFAS – Columbus Center for DoD Activities.

NOTE 2: See paragraph (c) for facsimile invoicing for DETENTION/DEMURRAGE costs.

NOTE 3: INVOICES WILL REFLECT QUANTITIES IN WHOLE NUMBERS AND SHALL BE ROUNDED AS APPLICABLE. Example: 7,529.4 = 7,529 or 7,529.5 = 7,530.

- (a) IMPORTANT NOTICE: Contractors who select the facsimile (FAX) method of invoicing prior to award in accordance with the FACSIMILE INVOICING or the FACSIMILE OR ELECTRONIC INVOICING provision must do so for all invoices. Failure to comply with the requirements of this clause will result in revocation of the Contractor's right to submit invoices by the FAX method.
 - (b) INSTRUCTIONS FOR SUBMITTING INVOICES VIA FACSIMILE.
- (1) When the Contractor has elected to transmit invoices by FAX, it is responsible for validating receipt of its FAXed invoice. Because DFAS-BVDF/CC cannot be held accountable for transmissions not received, the Contractor must verify transmission/receipt of its FAX by telephoning Customer Service (DFAS-BVDF/CC) at (800) 756-4571 (Options 2 and 2). Personnel are available to verify receipt of FAXed transmissions between 8 a.m. and 5 p.m., EST/EDT, Monday through Friday, excluding Federal holidays.
 - (2) The DFAS-BVDF/CC FAX numbers are—
 - (i) (614) 693-2473 for DFAS-BVDFB/CC; and
 - (ii) (614) 693-2537 for DFAS-BVDFP/CC.
 - (3) The Contractor shall include its FAX number on each document transmitted.
- (4) After transmitting the original invoice, the Contractor shall mark that invoice "ORIGINAL INVOICE FAXED" and retain it. The hard copy is **not** required for payment and shall **not** be mailed to the payment office unless DFAS-BVDF/CC specifically requests it.
 - (5) F.O.B. DESTINATION DELIVERIES.
 - (i) CERTIFICATION OF RECEIPT.
- (A) Receiving activity personnel will certify the receipt of fuel by preparing and signing one of the following documents:
 - (a) The SF 1449, Solicitation/Contract/Order for Commercial Items; or
 - (b) The DD Form 1155, Order for Supplies or Services; or
 - (c) The DD Form 250, Material Inspection and Receiving Report; or
 - (d) The DD Form 250-1, Tanker/Barge Material Inspection and Receiving Report (for tanker and

barge deliveries only).

- (B) Payments to the Contractor will be based on the receipt of the "paying copies" of the receiving report to DESC-FII, Fort Belvoir, VA, and payment will be made in accordance with the terms of the contract.
 - (ii) PC&S DELIVERIES.
 - (A) Overbillings--
- (a) That are less than or equal to 0.5 percent of the quantity listed on the receiving document will be paid as originally invoiced by the Contractor when the overbilled quantity is solely a result of a difference in measurement techniques.

- (b) That exceed 0.5 percent of the quantity listed on the receiving document will be paid based on the quantity as determined by the activity and annotated on the activity's receiving document.
 - (B) Underbillings will be paid as invoiced.
- (C) Notwithstanding any permissible variation percentage, payment is authorized for a percentage not to exceed 120 percent of the ordered quantity. Payment shall be made for quantity within this allowable variation listed on the receiving document as received and accepted by the activity and invoiced by the Contractor.

(6) F.O.B. ORIGIN DELIVERIES - RECEIVING REPORTS.

- (i) When FAXing an **invoice** for f.o.b. origin deliveries, the Contractor shall also FAX a copy of the applicable receiving report to DESC-FII, Room 2933, Fort Belvoir, VA, for GROUND FUELS (PC&S) DELIVERIES. DESC-FII's FAX number is **(703)** 767-9380. The receiving report shall be transmitted no later than two working days after each delivery.
- (ii) The following forms, signed by the Quality Representative (QR), are acceptable receiving reports for f.o.b. origin deliveries:
 - (A) DD Form 250 (Material Inspection and Receiving Report); or
 - (B) DD Form 250-1 (Tanker/Barge Material Inspection and Receiving Report).
- (iii) The signed copy, which certifies acceptance by the QR of the product prior to submission of the invoice, will have the following information stamped, printed, or typed on it: "ORIGINAL RECEIVING REPORT FOR PAYMENT OF INVOICE."
- (c) INVOICING DETENTION/DEMURRAGE COSTS VIA FACSIMILE. Detention/demurrage costs, allowable only on tank truck deliveries (not applicable to multiple drop tank truck or any tank wagon deliveries) and barge/tanker deliveries, will be the sole responsibility of the activity incurring them. Invoices for detention/demurrage costs will be submitted by the Contractor directly to the activity receiving the product. These provisions are applicable to DLA-owned/capitalized as well as non-DLA-owned/noncapitalized products. If the receiving activity is an Army activity, a copy of the detention/demurrage cost invoice must also be furnished to the following address:

COMMANDER US ARMY PETROLEUM CENTER ATTN SATPC-L NEW CUMBERLAND PA 17070-5008

(DESC 52.232-9FG5)

I1.01-1 DEFINITIONS (DESC FEB 1998)

As used throughout this contract, the following terms shall have the meanings set forth below.

- (a) **Quality Representative** (QR) includes the terms Quality Assurance Representative (QAR) and Quality Surveillance Representative (QSR).
- (1) The QAR is a Government Representative authorized to represent the Contracting Officer to assure the Contractor complies with the contractual requirements in furnishing petroleum products and services.
- (2) The QSR is a Government Representative authorized to represent the Contracting Officer to assure the Contractor complies with the contractual requirements in furnishing services.
- (b) **Ordering Officer** means whichever of the following or their designated representatives is applicable: (1) the Commander, Defense Energy Support Center; (2) the Commander, Defense General Supply Center; (3) the Commander, U.S. Army Petroleum Center; (4) the Commanding Officer, U.S. Navy Petroleum Office; (5) the Director of Air Force Aerospace Fuels; (6) the Chief of the Air Force Aerospace Fuels Office; (7) the Officer in charge of the Federal Government activity encompassing any delivery point indicated in the Schedule; (8) the Commanding Officer or the Master of the vessel to be bunkered; (9) any Government Contractor furnishing evidence of authority to order under this contract; (10) the head of any Federal Government agency; (11) the pilot, the flight commander, the aircraft commander or the crew chief of the U.S. designated aircraft authorized to place orders against into-plane contracts; (12) the Contracting Officer; (13) the individual in charge of ordering coal at the receiving Government activity; (14) the driver of a Federal vehicle or boat, or the pilot of a Federal aircraft authorized to place orders under a service station contract; (15) the Navy Fleet Commanders; (16) the Defense Attaché Officer; (17) the authorized ship manager (contractor) for the Maritime Administration who is ordering ships' bunkers on behalf of Maritime Administration vessels; (18) the ships' husbanding agent, furnishing evidence of contractual authority, who passes the order (verbal or written) on behalf of the requesting government vessel.

(c) The acronym **TK** means tanker, **B** means barge, **TC** means tank car, **T** means truck, **TT** means transport truck, **TTR** means truck and trailer, **TW** means tank wagon, **P** means pipeline, and **MSS** means Marine Service Station. The acronyms or terms **TT** or **transport truck** and **TTR** or **truck and trailer** mean tank truck equipment, whereas the acronym or term **T** or **truck** means truck equipment for hauling drummed or packaged supplies. The acronym **SW** means supplier's works, **CFD** means Contractor-furnished drum, and **GFD** means Government-furnished drum.

(DESC 52.202-9F10)

I1.03-3 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (NON-PORTS INTERNET APPLICATION) (DESC SEP 2002)

(a) INSPECTION/ACCEPTANCE.

- (1) The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (i) within a reasonable time after the defect was discovered or should have been discovered; and (ii) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
 - (2) Also see the REQUESTS FOR WAIVERS AND DEVIATIONS clause in the Addendum.
- (b) **ASSIGNMENT.** The Contractor or its assignee may assign its rights to receive payment due, as a result of performance of this contract, to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes a payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its right to receive payment under this contract.
- (c) **CHANGES.** [Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
- (d) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.
 - (e) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference.
- (f) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either it s sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- (g) **INVOICE.** The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--
 - (1) Name and address of the Contractor;
 - (2) Invoice date and number;
 - (3) Contract number, contract line item number, and, if applicable, the order number;
 - (4) Description, quantity, unit of measure, unit price, and extended price of the item delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
 - (6) Terms of any prompt payment discount offered;
 - (7) Name and address of official to whom payment is to be sent; and
 - (8) Name, title, and phone number of person to be notified in event of defective invoice, and
- (9) **Taxpayer Identification Number (TIN).** The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(10) Electronic funds transfer (EFT) banking information.

- (i) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
- (ii) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer Other Than Central Contractor Registration), or applicable agency procedures.
- (iii) EFT banking information is not required if the Government waived the requirement to pay by EFT. Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.
- (h) **PATENT INDEMNITY.** The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United Stated or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.
- (i) **PAYMENT.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C 3903) and OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment was made.
- (j) **RISK OF LOSS.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon-
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.
 - (k) TAXES. See Addendum 2.
- (1) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE.** The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (m) **TERMINATION FOR CAUSE.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (n) **TITLE.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.
- (o) **WARRANTY.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- (p) **LIMITATION OF LIABILITY.** Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.
- (q) **OTHER COMPLIANCES.** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations applicable to its performance under this contract.
- (r) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti- Kickback Act of 1986, 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistle blower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

- (s) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:
 - (1) The schedule of supplies/services;
- (2) The Assignments; Disputes, Payments; Invoices; Other Compliances; and Compliance with Laws Unique to Government Contracts paragraphs of this clause;
 - (3) The clause at 52.212-5;
 - (4) Addenda to this solicitation or contract, including any license agreements for computer software;
 - (5) Solicitation provisions if this is a solicitation;
 - (6) Other paragraphs of this clause;
 - (7) Standard Form 1449;
 - (8) Other documents, exhibits, and attachments; and
 - (9) The specification.

(FAR 52.212-4, tailored/DESC 52.212-9F50)

I1.03-8 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) (DESC SEP 2002)

(a) INSPECTION/ACCEPTANCE.

- (1) The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights (i) within a reasonable time after the defect was discovered or should have been discovered; and (ii) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
 - (2) Also see the REQUESTS FOR WAIVERS AND DEVIATIONS clause in the Addendum.
- (b) **ASSIGNMENT.** The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract, to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes a payment (e.g., use of the Government-wide commercial purchase card), the Contractor may not assign its right to receive payment under this contract.
- (c) **CHANGES.** Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
- (d) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.
 - (e) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference.
- (f) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either it s sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) INVOICE.

- (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--
 - (i) Name and address of the Contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number, contract line item number, and, if applicable, the order number;
 - (iv) Description, quantity, unit of measure, unit price, and extended price of the item delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

- (vi) Terms of any prompt payment discount offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to be notified in event of defective invoice.
- (ix) **Taxpayer Identification Number (TIN).** The Contractor shall include its TIN on the invoice only if required elsewhere in this contract; and
 - (x) Electronic funds transfer (EFT) banking information.
- (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
- (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer Other Than Central Contractor Registration), or applicable agency procedures.
- (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
- (2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.
- (h) **ELECTRONIC INVOICING.** See the CONTRACT TERMS AND CONDITIONS COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) ADDENDUM clause in Addendum 2.
- (i) **PATENT INDEMNITY.** The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.
- (j) **PAYMENT.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C 3903) and OMB prompt payment regulations at 5 CFR part 1315. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (k) **RISK OF LOSS.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon--
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
- (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.
 - (1) TAXES. See Addendum 2.
- (m) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE.** The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.
- (n) **TERMINATION FOR CAUSE.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (o) **TITLE.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.
- (p) **WARRANTY.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

- (q) **LIMITATION OF LIABILITY.** Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.
- (r) **OTHER COMPLIANCES.** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations applicable to its performance under this contract.
- (s) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS.** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti- Kickback Act of 1986, 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistle blower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.
- (t) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:
 - (1) The schedule of supplies/services;
- (2) The Assignments; Disputes, Payments; Invoices; Other Compliances; and Compliance with Laws Unique to Government Contracts paragraphs of this clause;
 - (3) The clause at 52.212-5;
 - (4) Addenda to this solicitation or contract, including any license agreements for computer software;
 - (5) Solicitation provisions if this is a solicitation;
 - (6) Other paragraphs of this clause;
 - (7) Standard Form 1449;
 - (8) Other documents, exhibits, and attachments; and
 - (9) The specification.

(FAR 52.212-4, tailored/DESC 52.212-9F51)

I1.03-9 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION) - ADDENDUM (DESC MAR 2002)

Use of electronic invoicing via PORTS is mandatory under the resultant contract. Therefore, in lieu of the invoicing procedures outlined in (g) of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (PC&S) (PORTS INTERNET APPLICATION clause, the Contractor shall submit its invoices in accordance with the PAPERLESS ORDERING AND RECEIPTS TRANSACTION SCREENS (PORTS) INTERNET APPLICATION clause.

- (a) **Exceptions** to the use of electronic invoicing are limited to the following:
- (1) Instances in which the PORTS Internet application is not available or accessible and the Contractor informs the DESC Contracting Officer of this fact by facsimile message.
 - (2) Instances in which retroactive price changes and/or unit price errors result in money due the Contractor.
 - (b) In the event of an exception to invoicing identified above, the Contractor shall--
- (1) Fax its invoice to DFAS-BVDFP/CC at the following fax number: **(614) 693-0670.** For faxed invoices, the Contractor is responsible for verifying transmission/receipt of the fax by telephoning Customer Service (DFAS-BVDFP/CC) at **1-800-453-5014**. If local (Columbus Metro Area), the Customer Service number is **(614) 693-4994**. Personnel are available to verify receipt of faxed transmissions between 8 a.m. and 5 p.m. EST/EDT, Monday through Friday, excluding Federal holidays.
 - (2) Include the Contractor's fax number on each document transmitted.
- (3) After transmitting the original invoice, the Contractor shall mark that invoice "ORIGINAL INVOICE FAXED" and retain it. The hard copy is not required for payment and shall not be mailed to the payment office unless DFAS-BVDFP/CC specifically requests it.

(DESC 52.212-9F52)

I1.20-1 CLAUSES AND PROVISIONS INCORPORATED BY REFERENCE (DESC JAN 2003)

- (a) This clause incorporates contract clauses and solicitation provisions by reference with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available.
- (b) The full text of any FAR, DFARS, or DLAD solicitation clause or provision may be accessed electronically at these addresses:

FAR/DFARS: http://farsite.hill.af.mil
http://www.dla.mil/j-3/j-336

(c) All <u>DESC</u> clauses and provisions are contained in full text in this document.

- (d) **Solicitation Provisions Only.** The offeror is cautioned that the solicitation provisions listed in (e)(1) below may include blocks that must be completed by the offeror and submitted with its quotation or offer. As long as the offeror identifies the solicitation provision by number, the offeror may simply complete those paragraphs requiring fill-in information to submit with its quotation or offer. In addition to the solicitation provisions listed in (e)(1) below, the contract clauses listed in (e)(2) below shall apply to any resultant contract but do not require the submission of additional offer information.
- (e) The following FAR/DFARS/DLAD contract clauses and solicitation provisions are hereby incorporated by reference in addition to those listed in the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUES OR EXECUTIVE ORDERS COMMERCIAL ITEMS and the CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS clauses:

(1)

SOLICITATION PROVISION NUMBER	REGULATORY <u>NUMBER</u>	PROVISION TITLE
L2.10	FAR 52.214-34	SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1984)
L2.10-1	FAR 52.214-35	SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1984)
L5.1-1	DLAD 52.233-9000	AGENCY PROTESTS (SEP 1999)

(2)

CONTRACT	REGULATORY	
CLAUSE NUMBER	<u>NUMBER</u>	<u>CLAUSE TITLE</u>
7105	T. D. 50 011 16	
F105	FAR 52.211-16	VARIATION IN QUANTITY (APR 1984)
G150.03	DESC 52.232-9FH5	ELECTRONIC SUBMISSION OF INVOICES FOR PAYMENT
		(EDI) (DESC OCT 1998)
I1.04	FAR 52.212.5	CONTRACT TERMS AND CONDITIONS REQUIRED TO
		IMPLEMENT STATUTES OR EXECUTIVE ORDERS –
		COMMERCIAL ITEMS (DEC 2003

- 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (Oct 1995) (41 U.S.C. 253g AND 10 U.S.C. 2402).
- 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Jan 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer.) (15 U.S.C. 657a).
- 52.219-8, Utilization of Small Business Concerns (Oct 2000) (15 U.S.C. 637(d)(2) and (3)).
- 52.219-9, Small Business Subcontracting Plan (Jan 2002) (15 U.S.C. 637 (d)(4)).
- 52.219-14, Limitations on Subcontracting (Dec 1996) (15 U.S.C. 637(a)(14)).
- 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (Jun 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- 52.219-25, Small Disadvantaged Business Participation Program Disadvantaged Status and Reporting (Oct 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- 52.222-19, Child Labor Cooperation with Authorities and Remedies (Sep 2002) (E.O. 13126).
- 52.222-26, Equal Opportunity (Apr 2002) (E.O. 11246).
- 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).

- 52.222-36, Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793).
- 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212).
- 52.232-33, Payment by Electronic Funds Transfer Central Contractor Registration (Oct 2003) (31 U.S.C. 3332).
- 52.232-34, Payment by Electronic Funds Transfer Other Than Central Contractor Registration (May 1999) (31 U.S.C. 3332).
- II.05 FAR 52.212.5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITION OF COMMERCIAL ITEMS (DEC 2003)
 - 252.219-7003, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (DoD Contracts) (APR 1996) (15 U.S.C. 637)
 - 252.219-7004, Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan (Test Program) (JUN 1997) (15 U.S.C. 637 note).
 - 252.225-7001, Buy American Act and Balance of Payments Program (APR 2003) (41 U.S.C. 10a-10d, E.O. 10582).
 - 252.225-7021, Trade Agreements (AUG 2003) (19 U.S.C. 2501-2518 and 19 U.S.C. 3301 note).
 - 252.243-7002, Requests for Equitable Adjustment (MAR 1998) (10 U.S.C. 2410).

I1.07	DFARS 252.204-7004	REQUIRED CENTRAL CONTRACTOR REGISTRATION (MAR 2000)
I11.04	FAR 52.242-13	BANKRUPTCY (JUL 1995)
I27	FAR52.203-3	GRATUTITIES (APR 1984)
I33	FAR 52.232-17	INTEREST (JUN 1996)
I171.07	FAR 52.219-16	LIGUID DAMAGES – SUBCONTRACTING PLAN (JAN 1999)
I174.05	DESC 52.219-9F36	MANUFACTURING AND FILLING POINTS (HUBZONES)
		(DESC MAR 1999)
I174.06	DESC 52.219-9F37	MANUFACTURING AND FILLING POINTS (UNRESTRICTED)
		(SDB PEA) (DESC FEB 1999)

(DESC 52.252-9F08)

I28.01 FEDERAL, STATE, AND LOCAL TAXES (DESC AUG 2003) (DEVIATION)

- (a) As used in this clause--
- (1) **After-imposed tax** means any new or increased Federal, State, or local tax that the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the contract date.
- (2) After-relieved tax means any amount of Federal, State, or local tax that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.
- (3) All applicable Federal and State taxes means all excise taxes that the taxing authority is imposing and collecting on the transactions or property covered by this contract pursuant to written ruling or regulation in effect on the contract date.
- (4) **Contract date** means the date set for bid opening or, if this is a negotiated contract or a modification, the date set for final revised prices.
- (5) **Local taxes** means taxes levied by the political subdivisions of the States, District of Columbia, or outlying areas of the United States, e.g., cities and counties.
 - (6) Outlying areas means—
 - (i) Commonwealths. Puerto Rico and The Northern Mariana Islands;
 - (ii) Territories. American Samoa, Guam, and The U.S. Virgin Islands; and
- (iii) **Minor outlying islands.** Baker Island; Howland Island, Jarvis Island; Johnston Atoll; Kingman Reef; Midway Islands; Navassa Island; Palmyra Atoll; and Wake Atoll.

- (7) **State taxes** means taxes levied by the States, the District of Columbia, or outlying areas of the United States.
- (8) Tax means taxes, duties and environmental or inspection fees, except social security or other employment taxes.
- (b) The contract price includes all applicable Federal, State, and local taxes, except as otherwise provided. (See either the FEDERAL AND STATE TAXES/FEES EXCLUDED FROM CONTRACT PRICE clause or the FEDERAL, STATE, AND LOCAL TAXES AND FEES clause.)
- (c) The contract price shall be increased by the amount of any after-imposed tax if the Contractor states in writing that the contract price does not include any contingency for such tax.
 - (d) The contract price shall be decreased by the amount of any after-relieved tax.
- (e) The contract price shall also be decreased by the amount of any tax that the Contractor is required to pay or bear the burden of, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) The Contractor shall promptly notify the Contracting Officer of all matters relating to any tax that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (g) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

 (DESC 52.229-9F15)

128.02-2 FEDERAL, STATE, AND LOCAL TAXES AND FEES (DESC OCT 2003)

- (a) **FEDERAL EXCISE TAXES EXCLUDED.** Contract prices for fuel and fuels oils furnished under this contract exclude Federal Excise Taxes (FET). Contractors shall invoice applicable FET as follows:
- (1) **GASOLINE/GASOHOL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.
- (2) **AVIATION GASOLINE.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice. **NOTE:** Use of aviation gasoline for military aircraft is tax-exempt.
- (3) FUEL OIL (BURNER GRADES) NUMBERS 1, 2, 4, 4 (LIGHT), 5 (LIGHT), 5 (HEAVY), AND 6. There is no FET on fuel oils (burner grades). Lighter grades (numbers 1, 2, and 4 (light)) must be dyed. Contractors are responsible for obtaining fuel oils (burner grades numbers 1, 2, and 4 (light)) meeting Internal Revenue Service (IRS) dyeing requirements.
 - (4) DIESEL AND NONAVIATION GRADE KEROSENE FUEL.
- (i) UNDYED DIESEL AND UNDYED NONAVIATION KEROSENE FUEL. Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.
- (ii) **DYED DIESEL AND DYED NONAVIATION KEROSENE FUEL.** There is no FET on dyed diesel and dyed nonaviation kerosene fuel.
- (5) **JET FUEL.** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice. **NOTE:** Use of jet fuel for military aircraft is tax-exempt.
- (6) **BIODIESEL (B-20).** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.
- (7) **E85 (QUALIFIED ETHANOL).** Unless an exemption applies, include the FET as a separate item on the Contractor's invoice.
- (8) **EXEMPT SALES.** As noted above, use of jet fuel and aviation gasoline for military aircraft is tax exempt. Certain uses of gasoline, undyed diesel fuel, and undyed nonaviation kerosene may also be tax-exempt. Contractors authorized by the IRS to sell tax-free fuel should obtain exemption certificates for these sales and not invoice the FET. A Contractor not permitted by IRS regulations to sell tax-free fuel must state that in its offer.
- (b) **STATE TAXES INCLUDED.** Unless an exemption applies, all contract prices **INCLUDE** State taxes. Examples of such taxes include excise, gross receipts, NORA, etc. The Contractor's invoice shall include a list of all State taxes that are included in the price, including the applicable rate.

- (c) LOCAL TAXES INCLUDED. Unless an exemption applies, all contract prices INCLUDE local (city, county, etc.) taxes. The Contractor's invoice shall include a list of all local taxes that are included in the price, including the applicable rate.
- (d) ENVIRONMENTAL AND OIL SPILL TAXES AND INSPECTION FEES INCLUDED. Unless an exemption applies, all contract prices INCLUDE State and local environmental and oil spill taxes and inspection fees.
- (e) **LICENSES** Federal, State, and local licenses or other requirements necessary to establish Contractor's entitlement to do business and/or to make tax-exempt sales under this contract are the Contractor's responsibility. Failure to obtain appropriate licenses or to follow required procedures shall preclude the reimbursement of taxes that would otherwise be exempt.

(DESC 52.229-9F25)

128.03-2 TAX EXEMPTION CERTIFICATES (DESC OCT 2003)

(a) TAX EXEMPTION CERTIFICATES FOR MILITARY ACTIVITIES, INCLUDING THE NATIONAL GUARD.

- (1) The Ordering Officer will issue tax exemption certificates for Federal Excise Tax (FET), where applicable.
- (2) Tax exemption certificates for the FET will not be issued for Army National Guard and Air National

Guard activities. DFAS Columbus will pay the FET and apply to the Internal Revenue Service (IRS) for any applicable refund.

- (3) All military activities, including the National Guard, will issue tax exemption certificates for State and local taxes and fees, where applicable. Contractors shall forward requests for tax exemption certificates covering any State or local taxes or fees to the Ordering Officer. If the Ordering Officer fails to provide tax exemption certificates requested by the Contractor, the Contractor shall notify the DESC Contracting Officer and an exemption certificate shall be issued, if applicable. The DESC Contracting Officer may authorize payment of the tax if the Ordering Officer refuses to issue the tax.
- (b) FEDERAL, STATE, AND LOCAL TAX EXEMPTIONS FOR FEDERAL CIVILIAN AGENCIES. Contractors shall forward requests for tax exemption certificates for Federal, State, and local taxes or fees to the Ordering Officer, when applicable.
- (c) GOVERNMENT OPTION TO DEDUCT TAX AND FURNISH TAX EXEMPTION CERTIFICATES. If this contract provides that the Contractor should invoice for the FET, the supplies under contract are intended for a taxable purpose. However, where the invoice for any item includes the FET and tax exemption can be claimed, the Government may deduct the applicable tax from the order or the invoice and furnish a tax exemption certificate in lieu of paying the tax. The Ordering Officer will issue these tax exemption certificates.

(DESC 52.229-9F45)

1171.01-2 SMALL BUSINESS SUBCONTRACTING PLAN (ALT II) (JAN 2002/OCT 2001)

- (a) This clause does not apply to small business concerns.
- (b) **DEFINITIONS**. As used in this clause--
- (1) **Commercial item** means a product or service that satisfies the definition of commercial items in section 2.101 of the Federal Acquisition Regulation.
- (2) **Commercial plan** means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).
- (3) **Individual contract plan** means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.
- (4) **Master plan** means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.
- (5) **Subcontract** means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

- (c) Proposals submitted in response to this solicitation shall include a subcontracting plan, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.
 - (d) The offeror's subcontracting plan shall include the following:
- (1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.
 - (2) A statement of -
- (i) Total dollars planned to be subcontracted for an individual contract plan, or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;
 - (ii) Total dollars planned to be subcontracted to small business concerns;
 - (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
 - (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
 - (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
 - (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
 - (vii) Total dollars planned to be subcontracted to women-owned small business concerns.
- (3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to--
 - (i) Small business concerns;
 - (ii) Veteran-owned small business concerns,
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns; and
 - (vi) Women-owned small business concerns.
 - (4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
- (5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing & Access Network (PRO-Net) of the Small Business Administration, veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.
- (6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—
 - (i) Small business concerns;
 - (ii) Veteran-owned small business concerns,
 - (iii) Service-disabled veteran-owned small business concerns;
 - (iv) HUBZone small business concerns;
 - (v) Small disadvantaged business concerns, and
 - (vi) Women-owned small business concerns.
- (7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

- (8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and womenowned small business concerns have an equitable opportunity to compete for subcontracts.
- (9) Assurances that the offeror will include the clause in this contract entitled UTILIZATION OF SMALL BUSINESS CONCERNS in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan that complies with the requirements of this clause.
 - (10) Assurances that the offeror will--
 - (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
 - (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.
- (11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):
- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and womenowned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or womenowned small business concerns.
 - (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating-
 - (A) Whether small business concerns were solicited and if not, why not;
 - (B) Whether veteran-owned small business concerns were solicited and if not, why not;
 - (C) Whether service-disabled veteran-owned small business concerns were solicited and if not, why

not;

- (D) Whether HUBZone small business were solicited and if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and if not, why not;
- (F) Whether women-owned small business concerns were solicited and if not, why not, and
- (G) If applicable, the reason award was not made to a small business concern.
- (iv) Records of any outreach efforts to contact--
 - (A) Trade associations;
 - (B) Business development organizations,
 - (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-

owned small business sources; and

- (D) Veterans service organizations.
- (v) Records of internal guidance and encouragement provided to buyers through-
 - (A) Workshops, seminars, training, etc., and
 - (B) Monitoring performance to evaluate compliance with the program's requirements.
- (vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.
- (e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

Clause/Provision Attachment to SP0600-02-R-0024-0001

- (1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- (2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and womenowned small business concerns in all "make-or-buy" decisions.
- (3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business and women-owned small business firms.
- (4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.
- (f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—
 - (1) The master plan has been approved;
- (2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
- (3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.
- (g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or nor the prime Contractor is supplying a commercial item.
- (h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.
 - (i) The failure of the Contractor or subcontractor to comply in good faith with-
 - (1) The clause of this contract entitled UTILIZATION OF SMALL BUSINESS CONCERNS; or
 - (2) An approved plan required by this clause, shall be a material breach of the contract.
 - (i) The Contractor shall submit the following reports:
- (1) **Standard Form 294, Subcontracting Report for Individual Contracts.** This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.
- (2) **Standard Form 295, Summary Subcontract Report.** This report encompasses all the contracts with the awarding agency. It must be submitted semiannually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(FAR 52.219-9/Alt II)

I209.09 EXTENSION PROVISIONS (DESC APR 2003)

- (a) The DESC Contracting Officer reserves the right to unilaterally extend this contract on the same terms and conditions one or more times for a total of no more than six months. Notice of contract extension will be furnished to the Contractor 30 days prior to expiration of this contract or any extension thereof. However, nothing in this clause precludes the Contractor from agreeing to an extension of the contract if the DESC Contracting Officer fails to issue the notice within the 30 day time frame.
- (b) The foregoing extension may be exercised by the DESC Contracting Officer where continued performance is required until a follow-on contract is awarded or, in the event a follow-on contract has been awarded, until a succeeding Contractor is positioned to commence performance.
- (c) Extension of this contract shall be considered to have been accomplished at the time the DESC Contracting Officer provides written notification to the Contractor by facsimile or by mail.

(DESC 52.217-9F20)

THE FOLLOWING CLAUSE APPLIES ONLY TO <u>FEDERAL CIVIL ITEMS</u> CONTAINED IN THE <u>NON-SET-ASIDE</u> <u>PORTION</u> OF THIS ACQUISITION.

1240.01 NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (ALTERNATE I) (JUN 2003/JUN 2003)

(a) **DEFINITIONS.** As used in this clause--

Small disadvantaged business concern means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition and either—

- (1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and
 - (i) No material change in disadvantaged ownership and control has occurred since its certification;
- (ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- (iii) It is identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net).
- (2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or
 - (3) Is a joint venture as defined in 13 CFR 124.1002(f).

Historically black college or university means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense (DoD), the National Aeronautics and Space Administration (NASA), and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

Minority institution means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)) which, for purposes of this clause, includes a Hispanic-serving institution of higher education as defined in Section 316(b)(1) of the Act (20.U.S.C. 1059c(b)(1)).

(b) EVALUATION ADJUSTMENT.

- (1) The Contracting Officer will evaluate offers by adding a factor of _____ percent to the price of all offers, except--
 - (i) Offers from small disadvantaged business concerns that have not waived the adjustment;
- (ii) An otherwise successful offer of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is equaled or exceeded (see Section 25.402 of the Federal Acquisition Regulation (FAR));
- (iii) An otherwise successful offer where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government;

- (iv) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution; and
- (v) For DoD acquisitions, an otherwise successful offer of qualifying country end products (see Sections 225.000-70 and 252.225-7001 of the Defense FAR Supplement).
- (2) The Contracting Officer will apply the factor to a line up or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.
- (c) **WAIVER OF EVALUATION ADJUSTMENT.** A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waiver the adjustment.
 - Offeror elects to waive the adjustment.

(d) AGREEMENTS.

- (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for-
- (i) Services, except construction, at least 50 percent of the cost of personnel for contract personnel will be spent for employees of the concern;
- (ii) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;
- (iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or
- (iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.
- (2) A small disadvantaged business concern submitting an offer in its own name shall furnish, in performing this contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply in connection with construction or service contracts.

(FAR 52.219-23/Alternate I)

M72.02 EVALUATION FACTORS FOR BEST OVERALL VALUE (DOMESTIC) (DESC JUL 2003)

(a) APPLICATION. This provision applies only after all price evaluation factors have been considered.

(b) BASIS OF AWARD.

- (1) The Government will award contracts to the responsible offeror(s) whose offer conforms to the solicitation and that represents the best overall value. The Government will determine best overall value on the basis of an integrated assessment of the following evaluation factors, which are in descending order of importance:
 - (i) Price;
 - (ii) Past Performance; and
 - (iii) Socioeconomic Commitment.

The relative influence of price, past performance, and socioeconomic commitment will depend on the differences among the competing offerors, and not on any predetermined, fixed, weighted arrangements or trade-off formula. Price is more important than past performance, and price combined with past performance is significantly more important than socioeconomic commitment. All evaluation factors other than price (past performance and socioeconomic commitment), when combined, are approximately equal to price in importance.

- (2) In determining best overall value, the Government will evaluate and rate each offeror's past performance based on preestablished standards. The offer(s) selected as best value will represent the best tradeoff to the Government among price, past performance, and socioeconomic commitment. The Government may make award to other than the lowest priced offeror; however, the Government will not pay a premium that it considers disproportionate to the benefits associated with the offeror's record of past performance and socioeconomic commitment.
- (c) **ACCEPTABILITY OF OFFERS.** An offer will be considered acceptable if, and only if, an offeror agrees to the terms and conditions in the solicitation, or if the Government has accepted any exceptions submitted with the offer.

(d) EVALUATION OF PAST PERFORMANCE.

- (1) The Government will evaluate, based on preestablished standards, the quality of the offeror's past performance. This may include any aspect of past performance related to this solicitation. The assessment of the offeror's past performance will be used as a means of evaluating the offeror's ability to meet the solicitation requirements. A record of poor past performance may be considered an indication that the offeror has failed to conform to contract requirements and/or to standards of good workmanship; to adhere to contract schedules, including the administrative aspects of performance; to provide reasonable and cooperative behavior and commitment to customer satisfaction; and/or to display a business-like concern for the interests of the customer. Offerors shall be afforded an opportunity to address unfavorable reports of past performance, and the offeror's response, or lack thereof, will be taken into consideration. Recent contracts may be examined to ensure that corrective action measures have been put in place to prevent the recurrence of past performance problems. Prompt actions taken to correct performance problems may be considered a reflection of management concern for customer satisfaction; however, such action may not mitigate all negative performance trends. Additionally, a record of satisfactory or exceptional past performance will not result in a favorable assessment of an otherwise unacceptable proposal. Offerors lacking relevant past performance history or for which past performance information is not available will not be evaluated favorably or unfavorably on past performance.
- (2) The Government reserves the right to consider any information available to it in evaluating an offeror's past performance. This includes information obtained from the offeror's references, past and present customers, subcontractors, and any other sources that may have useful information. However, the Government reserves the right not to contact all of the references listed by the offeror. The Government also reserves the right to assess the offeror's past performance based solely on the offeror's performance under an existing DESC contract or a previous DESC contract for work similar to that required by the solicitation.
- (3) The subfactors listed below are equal to one another in importance and will be used to evaluate past performance:
- (i) **Quality of Product and Service.** Assessment of the offeror's ability to conform to contract requirements, specifications, and standards of good workmanship.
- (ii) **Schedule.** Assessment of the offeror's ability to meet delivery schedules, to respond to administrative issues in a timely manner, and to complete a contract.
- (iii) **Business Relations.** Assessment of the offeror's commitment to maintaining an acceptable level of performance, customer satisfaction, and meeting small business, veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business participation goals, as applicable. This includes the offeror's history of reasonable and cooperative behavior, participation in problem identification, and corrective action measures.

(e) EVALUATION OF SOCIOECONOMIC COMMITMENT.

- (1) The socioeconomic proposal provided by the offeror will be evaluated as follows:
 - (i) As a separate factor, for the offeror's proposal under this solicitation; and
 - (ii) As an element of the Business Relations subfactor of the Past Performance Factor.
- (2) The Government will evaluate, based on preestablished standards, the extent to which an offeror proposes to use small businesses, veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. An offeror that demonstrates greater commitment to partnering and subcontracting with small businesses, veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses will receive more favorable ratings. An offeror with higher percentage, complexity level, and variety of participation by small businesses, veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses generally will receive more favorable ratings. An offeror's current efforts to develop additional opportunities for small businesses, veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses will also be considered.
- (3) The offeror's proposal for socioeconomic support will be made a part of any resultant contract for use in determining how well the Contractor adheres to its socioeconomic plan. This plan will be monitored by the Small Business Office (DESC-DU) of the Defense Energy Support Center as a means of assisting the Contracting Officer in determining how well the Contractor performs. This determination may be used in future best value decisions.

(f) **BEST VALUE DETERMINATION.** After the past performance ratings are determined, a series of paired comparisons will be made between competing offerors for each line item. In making these paired comparisons, the Government will determine the difference in price, past performance, and socioeconomic commitment. If, in any paired comparison, one offeror is superior in past performance and offers the lowest price, then the Government will consider that offeror to represent the better value. But, if the offeror with the superior past performance offers a higher price than the competing offeror, the Government will decide whether the superior performance merits the higher price. If so, then the Government will consider the offeror with superior past performance at a higher price to represent the best value. Otherwise, the Government will consider the competing offeror with the lower price and lower past performance rating to represent a better value. If, in any paired comparison, the offerors are equal in the elements of price and past performance, then the offeror with the superior socioeconomic evaluation will represent the better value. The Government will continue to make paired comparisons in this manner until is has identified the offeror that represents the best value based on price, past performance, and socioeconomic commitment. In the event of a tie among all factors and subfactors between two or more offerors considered to represent the best value, the final award decision shall be made by a drawing by lot limited to those offerors. The drawing shall be witnessed by at least three persons, with the names and addresses of the witnesses and supervising official documented in the contract file.

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